IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32(2) (b)

Description of Case

Appeal from Order No. 05 of 2003

Date of decision :- 22.08.2006

A.F.R. (Approved for Reporting)

~~Not approved for reporting~~

Date :- 22.08.2006 Initials of Judge

Note :- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

HIGH COURT OF UTTARANCHAL
AT NAINITAL

Appeal from Order No. 05 of 2003

Smt. Tasleeman Begum
W/o Late Basi-ud-din
R/o Village – Gaurikhera,
Tehsil Sitargunj
District – Udham Singh Nagar .....Appellant

Versus

Sri Ataulla Khan
S/o Sri Sujaulla Khan
R/o Ward No. 2, Sitargunj
Tehsil – Sitargunj
District – Udham Singh Nagar ....Respondent

Sri B. M. Pingal i/b for Sri J.S. Virk learned counsel for the appellant.

Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble J. C. S. Rawat, J.

Per :- Hon'ble J.C.S. Rawat, J.

1. The first appeal under section 173 of the Motor Vehicles Act has been filed against the judgment and order dated 21.10.2002 passed by Motor Accidents Claims Tribunal/Additional District Judge (hereinafter referred as 'Tribunal), Nainital in M.A.C.P. No.236/1996 Smt. Tasleeman Begum Vs. Sri Ataulla Khan, whereby the learned Tribunal has dismissed the claim petition.

2. Brief facts of the case are that a claim petition under the Motor Vehicles Act was filed by Smt. Tasleeman Begum-appellant (the wife of deceased) alleging therein that on 27.05.1995 while her husband Basi-ud-din (deceased) was going on main

road near the gate of Mandi Samiti, Pilibhit Sitarganj road, the offending truck No.URP-5902 came from behind and hit the deceased due to which the deceased sustained grievous injuries as a result of rash and negligent driving by its driver. It was further alleged the deceased was aged about 50 years at the time of incident and he was a carpenter. He was earning Rs. 4000/- pm. Thus, the claimant-appellant had filed a claim petition for compensation of Rs. 15,73,000/-.

3. The respondent filed his written statement and contested the case. The respondent-Ataulla Khan, who was the owner of the offending truck, had filed his written statement in which he denied the allegations made in the claim petition. He had also denied that his truck No.URP 5902 had hit the deceased and his truck was involved in the said accident. He further alleged that he was not liable to pay the compensation.

4. The Tribunal framed necessary issues in the case. In support of the case, the claimant had adduced the evidence of herself as PW1. The claimant had also adduced the evidence of Babu as PW2, who was said to be the eye-witness of the accident. PW2 Babu had lodged the report at the police station. The defence had adduced the evidence of Sarfaraz Khan DW1, Ataulla Khan DW2 and Rais Ahmad DW3.

5. The Tribunal on the basis of the appraisal of the evidence of the parties had rejected the claim petition filed by the claimant. The Tribunal came to the conclusion that the claimant had miserably failed to prove that the offending truck was involved in the accident in which the deceased sustained the injuries and succumbed to the injuries. The learned Tribunal had further held that the evidence of PW2 Babu, who was said to be the eyewitness of the accident, was not credible and cogent on the ground that he appeared in the evidence before the criminal court in criminal case no.1031/1995 State Vs. Chote under section 279, 304A IPC and he had stated a discrepant version that he was not present at the spot at time of accident and he did not see the accident. The learned Tribunal had rejected the claim petition. Feeling aggrieved by this, the present appeal has been filed before this Court.

6. Heard learned counsel for the appellant and perused the record. None appeared for the respondent despite service of notice.

7. Learned counsel for the appellant-claimant vehemently argued that Babu PW2 had lodged the report at the police station alleging therein that on 27.05.1995 the offending truck No.URP-5902 dashed the deceased-the husband of the claimant and the deceased died on the same day at about 4PM due to the injuries sustained by him. It was further contended that PW2 Babu, who had been the

eyewitness of the incident, was produced before the Tribunal but the learned Tribunal erred in ignoring the version of PW2 without any rhyme and reason. Perusal of the evidence of PW2 Babu reveals that he had stated in his evidence that he saw the incident. PW2-Babu had categorically stated in his evidence that the offending truck hit the deceased from behind and due to which the deceased fell down by which he sustained the grievous injures on his person. The evidence of PW2 Babu was recorded by the learned Tribunal on 18.08.1999. Thereafter, the evidence of respondent was recorded on 13.05.2001. The respondent filed the copies of the statement of Babu and Mohd. Ahmad recorded before the criminal court in case no.1031/1995 State Vs. Chote under section 279/304A IPC police station Sitarganj on 7.4.2000 before the learned Tribunal. Admittedly, these statements were filed after recording of the evidence of PW2 Babu before the learned Tribunal. The learned Tribunal had disbelieved the evidence of PW2 Babu on the ground that the said witness was examined before the criminal court in criminal case no.1031/1995 State vs. Chote under section 279/304A IPC and he had stated in his evidence before the criminal court that he had not seen the incident and he was not present at the spot. This statement was not put to PW2 Babu. Though, the strict provisions of Evidence Act are not applicable in the proceeding under the Act and the procedure is a summary procedure, but the principle of natural justice applies to the inquiry held

before the Tribunal. It is well settled position of law that a person cannot be impeached without being given an opportunity to be heard. Though, section 145 of the Evidence Act may not be applicable but its principal enunciated in the section is applicable to the inquiry before the Tribunal. It was obligatory to The Tribunal to see that the credit of a witness cannot be impeached without being put any inconsistent or discrepant statement which he had given in any other proceedings. The credit of the witness can be impeached by proof any statement which is inconsistent with any part of his evidence in the court. The witness may be cross examined as to the previous statement made by him without such writing being shown to him. If it is intended to contradict him by his previous statement his attention must be called to those parts of it, which are to be used for purpose of contradicting him. A witness should be asked in cross examination whether he made any previous statement before the court relevant to the matters in question different from his present statement. If a denial is given he may be contradicted by showing that he made such statement and the object is to give him a chance of explaining the discrepancy or inconsistency and clear up the particular point of ambiguity or dispute. If the witness explains the discrepancy or inconsistency in his explanation the court can consider the explanation as to whether the said explanation is sufficient or not. After considering the explanation the Tribunal can impeach the testimony

of the witness. In the instant case, the respondent's counsel had not put the discrepancy and inconsistency to PW2 Babu before the learned Tribunal.

8. As such, the testimony of PW2-Babu cannot be disbelieved without giving him an opportunity to explain the said discrepancy and inconsistency. The learned Tribunal was not justified to disbelieve the testimony of PW2 Babu without affording him an opportunity to explain his previous discrepant and inconsistent statement.

9. In view of the foregoing discussion, we are of considered opinion that the matter should be sent back to the Tribunal to decide it afresh in light of the observations made above. The Tribunal shall also recall PW2-Babu and put him to the cross examination by the respondent as to enable him to put discrepancy and inconsistency as pointed out in his previous statement recorded before the criminal court. In case the respondent fails to put the inconsistency and discrepancy, the Tribunal will bear the liability to put the discrepancy and inconsistency to the witness and seek his explanation in the evidence. The parties will be at liberty to adduce their evidence in respect of their case. It is made clear that the claimant will be at liberty to cross examine the witness of the respondent if she desires at the time of evidence.

10. In view of the above, the appeal is allowed and the judgment & order dated 21.10.2002 passed by the Tribunal is set aside. The matter is remanded with the direction to dispose it in light of the observations made above. The Tribunal is directed to dispose of the matter expeditiously, preferably within a period of six months from the date of the receipt of copy of this order. The parties shall bear their own costs.

(J.C.S.Rawat, J.) **(Rajeev Gupta, C.J.)**

Dated 22.08.2006
LSR